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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,333	05/31/2006	Alexander Bovyrin	42390P21485	6241
8791 7590 12/23/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
BITAR, NANCY				
ART UNIT		PAPER NUMBER		
2624				
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12/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/581,333

**Applicant(s)**

BOVYRIN ET AL

**Examiner**

NANCY BITAR

**Art Unit**

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 May 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 31 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 7/5/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Examiner Notes**

1. Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner

### ***Claim Rejections - 35 USC § 101***

#### **35 U.S.C. 101 reads as follows:**

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since

use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

2. Claim(s) 7-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 7 defines “an article” embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., “When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized” – Guidelines Annex IV). That is, the scope of the presently claimed “an article” can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the claim to embody the program on “computer-readable medium” or equivalent in order to make the claim statutory. Moreover, Claim 7 is drawn to a machine accessible medium. Normally, the claim would be statutory. However, the specification, at page 8 lines 22-30 defines the claimed machine medium as encompassing statutory media such as a “ROM”, “hard drive”, “optical drive”, etc, as well as *non-statutory* subject matter such as a “a carrier wave that encodes a data signal.”

*A “signal” embodying functional descriptive material is neither a process nor a product (i.e., a tangible “thing”) and therefore does not fall within one of the four statutory classes of § 101. Rather, “signal” is a form of energy, in the absence of any physical structure or tangible material.*

Because the full scope of the claim as properly read in light of the disclosure encompasses non-statutory subject matter, the claim as a whole is non-statutory. The examiner suggests amending the claim to include the disclosed tangible computer readable media, while at the same time excluding the intangible media such as signals, carrier waves. Any amendment to the claim should be commensurate with its corresponding disclosure.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melo et al (Viewpoint Independent Detection of Vehicle Trajectories and Lane Geometry) in view of Reno et al ( Learning Surveillance Tracking Models for the Self Calibrated Ground Plane)

As to claims 1 and 2, Melo teaches a method of analyzing video frames capturing a 3D scene over time to automatically generate a road map of the 3D scene ( produces accurate trajectories and estimates lane geometry; see abstract) comprising: detecting positions of objects in the video frames( lane geometry can be estimated from uncalibrated but stable video sequences; section 1); estimating 3D transformation parameters for the objects ( estimate the lane geometry using uncalibrated traffic surveillance cameras, see abstract) ; predicting heights of the objects based at least in part on the 3D transformation parameters ( vehicle length, section 1) estimating road boundaries of the 3D scene using the object positions to generate the road map ( see section 4)

While Melo meets a number of the limitations of the claimed invention, as pointed out more fully above, Melo fails to specifically teach estimating 3D transformation parameters for the object and predicting heights of the objects based at least in part on the 3D transformation parameters

Specifically, Reno et al. et al. teaches rather than relying on a labour-intensive calibration procedures to recover the image to ground-plane homography, the system relies on a simple auto-calibration procedure to learn the relationship between image and world by simply watching events within the monitored scene. Moreover, Reno et al. teaches estimating 3D transformation parameters for the object ( section 2-2.1; figure 1) and predicting the height of the object (section 2.2). it would have been obvious to one of ordinary skill in the art to use the autocalibration in Melo method in order to simplify auto-calibration procedure to learn the relationship between image and world by simply watching events within the monitored scene. Therefore, the claimed invention would have been obvious to one of ordinary skill in the art at the time of the invention by applicant.

As to claim 3, Melo teaches the method of claim 1, further comprising removing outliers from the predicted heights of objects and repeating estimation of the 3D transformation parameters and prediction of the heights of objects ( see section 4).

As to claim 4, teaches the method of claim 1, wherein detecting positions of objects comprises applying a foreground object detection process to the video frames (A detected foreground blob comprises a connected region having more than a certain pre-defined minimum number of pixels ( $K_{min}$ ) in its area. A constant acceleration Kalman Filter (KF) is used to track the blobs through image coordinate space, see section 3)

As to claims 5 and 6, Melo teaches the method of claim 1, wherein estimating road boundaries comprises applying a region growing process to object positions to find pixels of the video frames belonging to a road surface in the 3D scene; and removing outlier pixels from the road map (RANSAC is robust to outlier trajectories produced by frequent vehicle lane changes, undetected overlapped vehicles and noise in the video sequence. Further

details of this method are presented in a companion paper, section 4; page 459)

The limitation of claims 7-12 has been addressed above.

Claim 13-17 differ from claim 1-6 only in that claim 1-6 are method claims whereas, claim 13-17 are system claims. Thus, claims 13-17 are analyzed as previously discussed with respect to claims 1-6 above.

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANCY BITAR whose telephone number is (571)270-1041. The examiner can normally be reached on Mon-Fri (7:30a.m. to 5:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on 571-272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jingge Wu/

Supervisory Patent Examiner, Art Unit 2624

**Nancy Bitar**

**12/15/2008**